

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DARNELL MCGARY,

Plaintiff,

v.

TIM BROWN, *et al*,

Defendants.

Case No. C06-5108RJB

REPORT AND
RECOMMENDATION

Noted for June 9, 2006

This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Plaintiff has filed a civil rights complaint under 42 U.S.C. § 1983. He is proceeding *in forma pauperis* in this matter. This matter is before the court due to plaintiff's failure to properly respond to the court's previous order to file an amended complaint. For the reasons set forth below, the undersigned recommends plaintiff's complaint be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e).

DISCUSSION

On April 10, 2006, the Court ordered plaintiff to file an amended complaint or show cause why this matter should not be dismissed. (Dkt. #7). Specifically, the Court found plaintiff's complaint deficient, because he failed to allege sufficient facts showing how individually named defendants caused or personally participated in causing harm that violated federal law or his constitutional rights, and because did not show

1 he was entitled to the injunctive relief he requested. Plaintiff also was warned that should he fail to so
2 respond by May 10, 2006, the Court would recommend dismissal of this matter.

3 In response, plaintiff filed "objections" to the Court's order to show cause. Those "objections,"
4 however, consist in their entirety as follows:

5 This matter is now before the District Judge, and Plaintiff ask [sic] for a thorough
6 review of the facts of the case as well as the report and recommendation to show cause.
Would the court also consider appointing counsel to represent Plaintiff.

7 Plaintiff's Objections to the Order to Show Cause (Dkt. #10). The only matter that was pending before the
8 District Judge presiding over this case was the undersigned's report and recommendation (Dkt. #9) to deny
9 plaintiff's motion for preliminary injunction (Dkt. #8). That report and recommendation recently was
10 adopted. (Dkt. #11). The undersigned thus finds plaintiff's response to the undersigned's order to show
11 cause to be entirely inadequate, and therefore recommends the Court dismiss his complaint for the reasons
12 set forth in that order.

13 With respect to plaintiff's request for counsel, the undersigned also recommends that request be
14 denied as well. There is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983.
15 While the court, under 28 U.S.C. § 1915(e)(1), can request counsel to represent a party proceeding *in*
16 *forma pauperis*, it may do so only in exceptional circumstances. Wilborn v. Escalderon, 789 F.2d 1328,
17 1331 (9th Cir. 1986); Franklin v. Murphy, 745 F.2d 1221, 1236 (9th Cir. 1984); Aldabe v. Aldabe, 616
18 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances requires an evaluation of both the
19 likelihood of success on the merits and the ability of plaintiff to articulate his claims *pro se* in light of the
20 complexity of the legal issues involved. Wilborn, 789 F.2d at 1331. Here, plaintiff has made no showing
21 that any of the above requirements for appointment of counsel have been met.

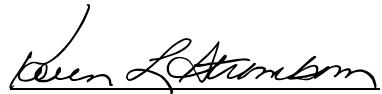
22 CONCLUSION

23 Because plaintiff has failed to properly respond to the Court's order to show cause directing him to
24 file an amended complaint to cure the deficiencies in his original complaint, the undersigned recommends
25 the Court dismiss that complaint prior to service as frivolous pursuant to 28 U.S.C. §1915(e).

26 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 72(b),
27 the parties shall have ten (10) days from service of this Report and Recommendation to file written
28 objections thereto. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those

1 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit
2 imposed by Fed. R. Civ. P. 72(b), the Clerk is directed to set this matter for consideration on **June 9,**
3 **2006**, as noted in the caption.

4 DATED this 18th day of May, 2006.

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8 Karen L. Strombom
9 United States Magistrate Judge
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